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Chairman: Mr. MADEJ (Poland)
(Vice-Chairman)

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ANNOUNCEMENT CONCERNING SPONSORSHIP OF DRAFT RESOLUTIONS

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In the absence of Mr. Lamptey (Ghana), Mr. Madej (Poland), Vice-Chairman, took the Chair

The meeting was called to order at 3.25 p.m.

AGENDA ITEM 138: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-SEVENTH SESSION (continued) (A/C.6/49/L.11 and A/C.6/49/L.13)

Draft resolutions A/C.6/49/L.11 and A/C.6/49/L.13

1. Mr. TRAUTTMANSDORFF (Austria), introducing the draft resolutions, said that since its inception the United Nations Commission on International Trade Law (UNCITRAL) had made an invaluable contribution to the progressive harmonization and unification of international trade law. Traditionally, UNCITRAL had concentrated on removing legal obstacles to the flow of international trade, especially those affecting the developing countries, and promoting the harmonization of their systems of trade law with those of industrialized countries. Special measures had become necessary with regard to promoting the harmonization efforts of the least developed countries.

2. The Commission's efforts to promote efficiency, consistency and coherence in international trade law were beneficial not only to developing countries, but also to countries with a highly developed and established market economy, as well as those whose economic systems were in transition from State-run to market economies. Such countries might have a particular interest in participating at an early stage in the efforts to unify and harmonize international trade law.

3. Draft resolution A/C.6/49/L.11, entitled "UNCITRAL Model Law on Procurement of Goods, Construction and Services", was patterned closely on General Assembly resolution 48/33 and was intended to promote the enhancement of existing procurement laws and the formulation of such laws where they did not exist through the utilization of the model provisions drafted by UNCITRAL.

4. The coordinators of the draft resolution had received a proposed amendment to paragraph 2, which would read as follows:

> "Recommends that, in view of the desirability of the improvement and uniformity of the laws of procurement, all States give favourable consideration to the Model Law when they enact or revise their procurement laws and that the courts, arbitrators and other appropriate authorities give favourable consideration to utilizing the Model Law as a source of current and acceptable international standards."

5. If that amendment was acceptable to the sponsors of the draft resolution, a revised version of the document would be submitted to the Committee for adoption at a later meeting.

6. Turning to draft resolution A/C.6/49/L.13, entitled "Report of the United Nations Commission on International Trade Law on the work of its twenty-seventh session", he said that it took note of the report of UNCITRAL (A/49/17), assessed some important elements of the report and dealt with the ongoing and future work of the Commission and the actions to be taken by the international community in that context. In particular, the draft resolution took into account the relatively low incidence of expert representation from developing countries, particularly the least developed countries, at sessions of the Commission and of its working groups, due in part to inadequate resources. Accordingly, emphasis was placed on measures to ensure the wider representation of developing countries through, inter alia, the holding of seminars in developing and other countries, the encouragement of voluntary contributions to the trust fund for UNCITRAL symposia, the award of fellowships and the support of training and technical assistance programmes.

7. In particular, the draft resolution called for continued consideration in the competent Main Committee on granting travel assistance, within existing resources, to the least developed countries that were members of UNCITRAL, and requested a further report on the matter by the Secretary-General.

8. Mr. LEGAL (France) said that, as a sponsor of draft resolution A/C.6/49/L.11, his delegation had difficulties with the proposed amendment. France believed that a model law was a set of guidelines which States might or might not take into account when revising their legislation in a given area. To urge courts and other legislative bodies to take a model law into account in the settlement of disputes would be to convert such rules into a standard of international law, which was not their normal function in international practice. Since courts were independent bodies, such instructions would not have much impact. In the interests of preserving clarity as to how rules of international law were created, his delegation preferred to retain the text as originally drafted.

9. Mr. TAN HAI CHUAN (Singapore) said that while his delegation could not comment officially on the proposed amendment, he shared the views expressed by the representative of France.

10. Mr. NATHAN (Israel) said that his delegation agreed with the representative of France that a court of arbitration could not take decisions on legislative texts, and he therefore preferred for the two draft resolutions to remain unchanged.

11. Mr. TRAUTTMANSDORFF (Austria) said that his delegation had not intended to reopen discussion on draft resolution A/C.6/49/L.11 at the current stage and would therefore withdraw its proposal.

12. Mr. MAIGA (Mali) said that the introduction of the two draft resolutions at the current meeting had taken his delegation by surprise. He requested the officers of the Committee to inform delegations well in advance when draft resolutions were to be considered so as to enable them to seek instructions from their Governments.

13. The CHAIRMAN said that the Committee would take action on the draft resolutions at a later meeting. He wished to inform the Committee that Bulgaria had joined the sponsors of draft resolution A/C.6/49/L.11 and that Uruguay had joined the sponsors of draft resolution A/C.6/49/L.13.

AGENDA ITEM 136: UNITED NATIONS DECADE OF INTERNATIONAL LAW (continued) (A/49/323 and Add.1 and 2; A/C.6/49/L.10)

14. Ms. TSONEVA (Bulgaria) said that the activities connected with the Decade of International Law contributed, at a time of political change, to the transition from confrontation to cooperation between States. It was desirable that the sphere of action of the principles of international law should be enlarged. Her country was party to many multilateral instruments, and the principles of international law were enshrined in the new Bulgarian Constitution.

15. Her country attached great importance to the peaceful settlement of disputes and to the protection of the environment. In that regard the guidelines for military manuals and instructions on the protection of the environment in times of armed conflict were particularly valuable. Her country also welcomed the forthcoming Congress on Public International Law, which would offer the opportunity for the exchange of views. She urged that there should be a debate at the Congress on the issue of United Nations sanctions, which were of major importance for many countries, including her own. The Congress would be useful only if it addressed the practical needs of States.

16. Economic and political changes throughout the world had contributed to developments in international law. One such was the wider role played by regional bodies, which could help to disseminate and increase respect for international law as an aspect of preventive diplomacy. As the Secretary-General had said in his previous report (A/48/312), the aims and principles of the Decade should be realized at the national level, too. Accordingly, in Bulgaria, international law was closely linked with the country's democratic process, its economic reforms and its entry into European structures. At the international level, the creation of a legal and stable basis for preventive diplomacy and the wider use of international law in the peaceful settlement of disputes would be significant milestones in the history of the United Nations.

17. Mr. KORZACHENKO (Ukraine) said that his country, which was at the beginning of its development as a sovereign State, regarded the strict observance of international law as the cornerstone of its foreign policy. Peace and international cooperation were the only conditions under which a young State could devote maximum attention to solving many of the pressing internal problems with which it was confronted.

18. In his statement to the General Assembly at the current session, the Minister for Foreign Affairs of Ukraine had stressed that his country attached great importance to the strengthening of the role of international law within the system of international relations and the establishment of an international climate which would exclude unilateral measures, interference in the internal

affairs of States, the proclamation of so-called spheres of interest, and so on. Ukraine called for the further strengthening of the principles and norms of international law, especially such fundamental principles as respect for the sovereignty and territorial integrity of States, the inviolability of their borders and the defence of the rights of national minorities.

19. Ukraine was continuing to assert its place in the international legal structure and to strengthen the juridical basis of bilateral relations. It had recently become a member of the International Maritime Organization (IMO) and a party to a number of conventions concluded under IMO auspices. Ukraine had also ratified or acceded to certain multilateral treaties concluded within the framework of the International Labour Organization. It was continuing to consider ways of participating in the treaties drawn up by the Council of Europe, particularly those relating to cooperation in the field of criminal justice.

20. In order to carry out the tasks with which it was confronted, Ukraine urgently needed to train, as soon as possible, a significant number of highly qualified specialists in international law. Faculties of international law had been opened in a number of the country's higher educational institutions, and the training capacities of existing international law centres had been expanded.

21. As a State which had experienced the tragedy of the Chernobyl disaster, Ukraine was especially interested in the further progressive development and codification of the norms of international law in the sphere of environmental protection. It perceived the need to establish reliable guarantees of environmental human rights and attached special importance to supporting any initiatives in that direction. His delegation expressed deep appreciation to the International Committee of the Red Cross for its work in the area of protection of the environment in times of armed conflict and, in particular, for its preparation of instructions in that area.

22. Ukraine welcomed the initiative concerning the holding of the United Nations Congress on Public International Law as part of the activities for the Decade. It also supported the proposal that in selecting lecturers and moderators for the Congress, the Secretariat should bear in mind the need to ensure the representation of all major legal systems and all geographical regions. Ukraine further welcomed the proposal by some delegations that United Nations sanctions as a tool for the peaceful settlement of disputes should be an appropriate topic for discussion under the theme relating to the peaceful settlement of disputes.

23. Ukraine also felt that, in addition to the themes already chosen, the Congress should deal with the following issues, the analysis and resolution of which would be in the interest of many States, including those which had recently joined the international community: theoretical and practical aspects of the legal succession of States arising from the disintegration of federative States; newly independent States and the acceptance and observance of the principles of territorial integrity and inviolability of borders; newly independent States and regional guarantees of their sovereignty; and

international law and priorities in the area of environmental security, drawing on the lessons of the Chernobyl disaster.

24. Lastly, his delegation supported the proposed programme of activities for the third term (1995-1996) of the Decade.

25. Mr. KALITA (India) said that in an era where the rule of law failed to prevail world wide, the United Nations Decade of International Law was serving the important purpose of reaffirming faith in international law as an instrument for maintaining and safeguarding international peace and security.

26. The Decade should emphasize the following: promotion and enhancement of peaceful methods for the settlement of disputes between States, including resort to and full respect for the International Court of Justice; general and complete disarmament, in particular nuclear disarmament and the elimination of weapons of mass destruction; respect for international legal principles concerning the use of force, intervention and other coercive measures in international relations; and promotion of public awareness of international law. The peace conference to be held at the end of the Decade should adopt those international instruments which were needed to strengthen international law and reinforce mechanisms for the peaceful settlement of disputes.

27. The promotion of international peace and a world order based on justice and international law was a laudable goal which had been realized in the form of a number of international instruments. His country endorsed the purposes of the Decade of International Law. A peace-loving country, India had achieved its independence without violence and, since that time, had been working for international peace and security based on justice and international law. It was one of the sponsors of the Delhi Declaration on Principles for a Nuclear-Weapon-Free and Non-violent World, which called for peace and total disarmament.

28. India had always promoted respect for the rule of law and had supported the progressive development and codification of international law. It had actively participated in international conferences convened for the purpose of adopting multilateral treaties dealing with international relations. It had ratified those instruments and was scrupulous in its compliance with their provisions. It was a party to a number of other international instruments, including the Convention on the Rights of the Child, the International Convention against the Taking of Hostages and the United Nations Framework Convention on Climate Change.

29. International law was part of the curricula at several universities and institutions in his country. His Government had been encouraging study and research in international law by providing financial and other assistance to academic institutions. It had also begun to publish in a treaty series the agreements that India had concluded with other countries since its independence. The federal Government and local governments had also been supporting other related activities, including international law competitions.

30. India was one of the founding States members of the Asian-African Legal Consultative Committee, the headquarters of which were located in New Delhi. It participated actively in all the Committee's activities.

31. All international relations should be based on the rule of law and, consequently, international law needed to be codified and progressively developed. Promotion of methods for the peaceful settlement of disputes among States was fundamental to achieving international peace and security. Such methods should be flexible and appropriate to the nature of the particular dispute. In that connection, he wished to draw attention to paragraph 5 of the Manila Declaration on the Peaceful Settlement of International Disputes, according to which States should settle their disputes on the basis of sovereign equality and in accordance with free choice of means. That latter principle reflected the spirit of the Charter of the United Nations. Article 33 of the Charter provided for various means of settling disputes between States, including negotiation, inquiry, mediation, conciliation and other peaceful means. While States should certainly be encouraged to use such methods, they should not be prevented from choosing other means of dispute settlement that might be available to them.

32. The cause of peace could not be fully realized until the current world order was modified and the international community agreed on the need for a non-violent world order; total elimination of nuclear weapons leading to complete and general disarmament; a new system of economic relations based on equality and justice; and the need to guarantee civil, political, economic and social rights, and freedom and dignity for all peoples.

33. His country endorsed the convening of and would actively participate in the United Nations Congress on Public International Law, to be held in March 1995 as part of the Decade of International Law.

34. Mr. POSTICA (Romania) said that in its resolution 48/30, the General Assembly had invited Governments and international organizations to submit information on activities they had undertaken in implementation of the programme of activities for the United Nations Decade of International Law. The variety of replies demonstrated the great interest taken by the international community in the Decade.

35. Romania had taken a number of steps during the past year to achieve the main purposes of the Decade. With regard to the first purpose, which was to promote acceptance of and respect for the principles of international law, his Government had acceded to several multilateral agreements during the period 1993-1994. It accorded particular importance to the promotion of means and methods for the peaceful settlement of disputes, and to that end had initiated the procedure for the ratification of the 1993 Convention on Conciliation and Arbitration, an instrument which would help consolidate the principles and practice of the peaceful settlement of disputes.

36. His country had been very active in encouraging the teaching, study, dissemination and wider appreciation of international law, in fulfilment of the

fourth purpose of the Decade. In Romania, courses of study in international law were provided at 8 State educational institutions and at more than 20 universities and private institutions. In 1993, his country had published two new international law manuals, a book on international space law and one dealing with treaty law. Studies, reviews of current developments and seminars and round tables dealing with topics in the field of international law had continued in his country under the auspices of the Romanian Institute for International Studies and the Romanian Association for Law and International Relations. The Institute had organized a high-level international forum, held in Bucharest in April 1994, which had dealt with such topics as parliamentary diplomacy in a new Europe and preventive diplomacy.

37. His country had applied the guidelines for military manuals and instructions on the protection of the environment in times of armed conflict by incorporating into its own manuals and instructions provisions on protection of civilians, the environment, the cultural and artistic patrimony, and potentially dangerous installations. In terms of military education, his country was focusing on the study and application of military decisions designed to achieve a balance between military advantage and the negative consequences of military actions. The Ministry of Defence had established a centre for international humanitarian law which had the task of training military personnel; that Ministry was also endeavouring to incorporate into various military regulations provisions concerning the protection of the environment in times of armed conflict, based on international instruments and General Assembly resolutions.

38. His delegation welcomed the preparations for the United Nations Congress on Public International Law, to be held in 1995. In that connection, it considered that the theoretical debate that would take place should be forward-looking and should endeavour to bring new vitality to the doctrine and study of international law.

39. His country would continue to participate actively in the programme of the Decade of International Law, which would do much to contribute to promoting international relations based on the principles and norms of law and justice.

40. Ms. WILLSON (United States of America) said that her Government strongly supported the main purposes of the Decade of International Law, which contributed to strengthening the rule of law in international relations. The Decade provided Member States with a way to inform the public about the importance of an international order based on law.

41. The Decade had made the international community aware of the need to find new ways of teaching and disseminating international law. In that connection, recent articles in the University of Toledo (Ohio) Law Review had discussed how the popular American television series Star Trek offered an opportunity to increase appreciation of international law by demonstrating some of its principles to a wide audience, including issues related to treaties, sovereignty, space law and law of the sea. Through its Law, Youth and Citizenship programme, the New York Bar Association had established a project, funded by the United States Department of Education, to bring the study of

international law to high school students. The project had published three books designed to teach students the principles of international law, including one which covered the major cases heard by the International Court of Justice and other international tribunals. The books had been distributed free of charge to New York schools and would be available nationwide. Her Government had also funded a five-day international law institute, under the auspices of the New York State Bar Association, which had provided teachers with training in international law and model curricula as well as United Nations field experience. The institute's model had then been developed or replicated at other schools throughout the country.

42. The American Society of International Law, dedicated to promoting understanding of and appreciation for the principles and the role of international law, had played a vital educational role by holding seminars and national and regional meetings. It had established various public forums for discussion of international law issues. The Society's interest group on the Decade of International Law had held a forum in 1994 at which papers had been presented on such topics as an international criminal court and transitional dispute resolution centres. Those papers, as well as the Secretary-General's reports on the Decade, had subsequently been published in the newsletter of the interest group. In July 1994 the Society had co-sponsored a workshop on international organizations which had brought together young scholars and United Nations experts.

43. Inspired by the Decade and with a view to increasing public understanding and awareness of international law, her country was producing a television series on public international law. The series consisted of 10 programmes covering the major issues in international law. More than 30 scholars and international lawyers had participated or appeared in the television series. The programmes used interviews, visual aids and special effects to promote their content effectively. The television series would be made available to law schools and universities and to other interested groups throughout the world; a learner's guide with references to relevant textbooks would be prepared to accompany the series.

44. An excerpt from the television series, entitled "The Nature and Sources of International Law", was projected.

45. Ms. MAWHINNEY (Canada) said that her country had a particular interest in three areas which demonstrated how international law could be used to facilitate international cooperation in the broadest sense. The first was the maintenance of international peace and security. One means of contributing to that was the implementation of multilateral treaties; and among those that Canada had recently ratified or intended to ratify shortly were the 1907 Hague Convention for the Pacific Settlement of International Disputes, the Montreal Convention on the Marking of Plastic Explosives and the Convention on chemical weapons.

46. Another important manner in which States contributed to the maintenance of peace and security was through the use of mechanisms for the peaceful settlement of disputes. At the heart of that process internationally was the International

Court of Justice. Her country supported the goal of universal acceptance of the Court's compulsory jurisdiction by the end of the Decade of International Law. Indeed, she believed that it should be given a wider role and that the Secretary-General should be authorized to take advantage of the Court's advisory competence.

47. A further interest for her delegation was the protection of individuals. In that connection it was encouraged by recent developments, in particular the drafting of a convention on the safety of United Nations and associated personnel and a declaration on the protection of victims of war. Her delegation was also encouraged by the establishment of the international ad hoc tribunals for the Former Yugoslavia and for Rwanda, which she hoped would lay the groundwork for an international criminal court. Thirdly, her delegation set great store by the protection of the environment. The fact that international law had played an important role in many issues, such as fisheries, oceans, desertification and international watercourses, provided ample evidence of the progressive development of international law and its codification. Her delegation particularly welcomed the draft guidelines for military manuals and instructions on the protection of the environment in times of armed conflict. States should be strongly encouraged to incorporate them into their military manuals and to ensure that they were effectively disseminated and implemented. Moreover, work in that area should be continued.

48. Lastly, she expressed Canada's enthusiasm regarding the forthcoming Congress on Public International Law; it fulfilled the last of the Decade's goals, namely to encourage the wider appreciation of international law. The aim should be to have as high a level of participation and interaction among the delegates and speakers as possible.

49. Mr. SIDI ABED (Algeria), speaking on behalf of the Maghreb Arab Union, consisting of Algeria, the Libyan Arab Jamahiriya, Mauritania, Morocco and Tunisia, expressed the Union's support for the objectives of the Decade of International Law. The acceptance of and respect for international law should provide a means whereby developing countries could enjoy effective participation in establishing the rule of law and thereby a just international legal framework where legitimate interests were safeguarded.

50. Given that the promotion of the peaceful settlement of disputes played a major role in diminishing tensions between States, the members of the Union strongly believed in the need to strengthen the part played by the International Court of Justice in that regard. Although the members of the Union retained the right to choose the form of peaceful settlement of disputes that they considered most satisfactory, they would lend their full weight to the Court, believing that its powers should be increased to enable it to respond adequately to the growing number of cases before it.

51. The Union was glad that preparations for the Congress on Public International Law were proceeding well. It hoped that the criteria for participation approved by States would be respected, such as the need to ensure the representation of all the major legal systems and all geographical regions.

52. The delegations that he represented were fully aware that the wide dissemination of international law was crucial to the acceptance of its pre-eminence in international relations. They therefore encouraged the study of international law at their universities and other institutions of higher education. They also believed that the number of training and retraining courses, such as those provided under United Nations auspices, should be increased at both regional and international levels. In that connection, cooperation should be built up between developed and developing countries in the study and teaching of international law. The Secretariat's efforts in putting out information were an important contribution to the Decade and to a wider understanding of international law. No effort should be spared in strengthening and consolidating the role played by the rule of law in the international community and in promoting the aims and principles of the United Nations.

53. Mr. THAHIM (Pakistan), after expressing his country's support for the main purpose of the Decade of International Law, which he hoped would provide an opportunity for the further codification of international law and promote respect for its role in international relations, said that he attached special importance to the peaceful settlement of disputes between States, including resort to the International Court of Justice. He was glad to note that, on the evidence of the increasing number of cases being brought before the Court, there was an ever greater understanding among States regarding the Court's vitally important role.

54. Other means of promoting solutions to the plethora of conflicts that had erupted in the post-cold-war era included fact-finding missions (which would also serve to provide warning of situations likely to endanger international peace and security), the processes of mediation, conciliation and arbitration envisaged in the United Nations Charter, the good-offices role of the United Nations and the appointment of independent commissions. The international community should also develop a system of incentives and disincentives to encourage Member States to comply with Security Council resolutions.

55. With regard to the dissemination of international law, he believed that special emphasis should be given to encouraging the establishment of academic and professional institutions concerned with research and education in international law in the developing countries, where they were particularly needed. The United Nations should provide financial and technical assistance to developing countries like Pakistan in organizing seminars and training courses and undertaking studies in various aspects of international law. More scholarships and stipends should be provided.

56. The programmes of the Decade should include the strict adherence to the norms of international humanitarian law, especially in areas marked by the use of force against innocent civilian populations. Another objective should be to maximize economic growth and minimize human suffering. Since the world economy might at last be coming out of recession, new growth was likely to be generated, mostly in the developing countries. Their integration into the world financial and trading system could contribute immensely to global output. Attention should therefore be given to resolving international economic problems,

particularly as they affected developing countries, by reducing interest rates, increasing development assistance, curbing protectionist policies and trade barriers, transferring technology to developing countries and stabilizing commodity prices.

57. Mr. CHOE Tong U (Democratic People's Republic of Korea) said that in the development of a body of international law to serve all countries and peoples of the world, three key principles must be respected. First, the principle of respect for the sovereignty of States must be strictly observed: international law should make a practical contribution to the progress and development of humankind by ensuring the independence of all countries and by developing relations among nations on the basis of justice and impartiality.

58. Secondly, matters of international law that had been incorrectly treated in the past must now be reappraised. In that regard, his delegation wished to point out that treaties such as the Ulsa Five-Point Treaty of 1905, which had legalized Japan's occupation of and colonial rule in Korea, had disregarded the principles of international law prevailing at that time. That Treaty had not been concluded on the instructions of Emperor Kojong of Korea, nor had it been endorsed, signed or ratified by him. Furthermore, it conflicted with the general principles of international law in that it had been forcibly and unilaterally imposed upon one of the parties by the other party.

59. Historical facts could neither be erased nor concealed. The Japanese authorities must now acknowledge that the Ulsa Treaty and other treaties and laws that had legalized Japanese aggression, crimes and colonial rule in Korea had been unilaterally imposed forgeries. That admission was particularly important in view of the fact that Japan was currently attempting to gain a permanent seat on the Security Council.

60. Lastly, it was vitally important to intensify the study and dissemination of international law in developing and enriching its principles. His delegation noted with satisfaction that United Nations bodies, and in particular the United Nations Institute for Training and Research (UNITAR), were providing more opportunities for the training of international law experts at regional and developing country levels.

61. Mrs. KUPCHYNA (Belarus) said that implementation of the programme of the United Nations Decade of International Law, and ultimately the stability and predictability of international development, depended on the attitude adopted by States vis-à-vis international law. Belarus continued to be actively involved in that area. One of the key events of the year had been the implementation on 10 March 1994 of the new Constitution of the Republic of Belarus. Article 8 of the new Basic Law established the supremacy of universally accepted principles of international law and required Belarusian legislation to be in accordance with those principles. At foreign policy level, the Constitution now incorporated such generally accepted principles of international law as the sovereign equality of States, non-use of force or the threat of force, the inviolability of borders, peaceful settlement of disputes and non-interference in the internal affairs of States. The Government was currently giving close

consideration to the question of establishing a National Committee on the United Nations Decade of International Law, in order to secure fuller implementation and coordination at national level of activities aimed at achieving the main goals of the Decade.

62. With regard to the United Nations Congress on Public International Law to be held in 1995, her delegation shared the view that it was important to ensure that all basic systems of law and all geographical regions were represented at the Congress. Participation by representatives of interested non-governmental organizations and by a broad spectrum of experts would contribute to its success. The Secretariat's proposal regarding the holding of unofficial meetings outside the official framework of the Congress was also worthy of support. With regard to the themes to be considered at the Congress, Belarus wished to support Ukraine's proposal to devote attention to the theoretical and practical aspects of the succession of States arising in connection with the disintegration of a federal State; and also to international law and priorities in the area of environmental safety, drawing on the lessons of the Chernobyl disaster. Her delegation was also interested in the proposal put forward by the Netherlands and Australia in the Working Group, to the effect that imposition of sanctions by the United Nations would be an appropriate topic for discussion in the context of the question of means of securing peaceful settlement of disputes between States. Like other delegations, hers considered that the work of the Congress should not lead to the adoption of any official or binding document.

63. The Chernobyl disaster had heightened the Belarusian people's perception of environmental problems, regardless of their causes. Belarus was grateful to the International Committee of the Red Cross (ICRC) for preparing a revised version of the guidelines for military manuals and instructions on the protection of the environment in times of armed conflict, and welcomed the further work of ICRC in that field. The question of protection of the environment in periods of armed conflict should remain on the agenda of the Sixth Committee.

64. Belarus supported in principle the idea put forward by the States of northern Europe concerning a major concluding project for the Decade, to define the direction and character of international law and order in the twenty-first century. The proposal by the Russian Federation on the convening of a third international peace conference in 1999 (A/49/151) was worthy of consideration.

65. Miss SHAHEN (Libyan Arab Jamahiriya) said that the main purposes of the United Nations Decade of International Law were to enhance the authority of international law and to promote respect for its principles. As her country attached great importance to the principle of the peaceful settlement of disputes and held the International Court of Justice in high esteem, it had used its services in three cases, twice in connection with a dispute concerning the continental shelf with Tunisia and Malta and once in connection with a dispute concerning the Aouzou Strip with Chad. It had accepted the outcome in all three cases, even though the Court's judgment had gone against its interests in the dispute with Chad.

66. The goals of the Decade would be unattainable if States continued to use international law when it suited them and to ignore it when it conflicted with their aims and interests. The law of the powerful still held sway. The United Nations should therefore be more active in urging all States, both big and small, to respect international law, in particular Chapter VI of the Charter of the United Nations concerning the peaceful settlement of disputes. Her own country's dispute with certain Western States showed the extent to which international law and its institutions were being disregarded - non-compliance with the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie, failure to refer the case to the International Court of Justice and forcing the Security Council to become involved in a legal issue and to impose sanctions for political reasons. Was it any wonder that small nations were losing hope in the future of international law and were even losing faith in the United Nations system?

67. Ms. CARYANIDES (Australia) said that the Agreement relating to the implementation of part XI of the United Nations Convention on the Law of the Sea, adopted by the General Assembly on 28 July 1994, was an important example of the international community's endeavour to develop universally applicable legal regimes in order to secure international harmony. Australia had ratified the Convention and the Agreement implementing part XI thereof on 5 October 1994. It regarded the entry into force of the Convention as a most important development in international law, and as an example of that successful promotion of the acceptance of multilateral treaties which was one of the Decade's objectives.

68. The International Law Commission's work on the elaboration of the draft statute for an international criminal court contributed to two of the objectives of the Decade: promotion of the acceptance of and respect for the principles of international law; and encouragement of the progressive development of international law and its codification. The success of efforts to establish such a court would represent a crowning achievement of the Decade.

69. Encouragement of the study and wider appreciation of international law was another purpose of the Decade, and Australia had been active in furthering that aim. The Legal Office of the Department of Foreign Affairs and Trade had participated in hosting government lawyers from South Pacific island countries, pursuant to a scholarship programme established for that purpose. The Government was also actively involved in the promotion of understanding and respect for refugee law. Government officials had been involved in presenting lectures on refugee law at universities, in the international dissemination of Australian refugee law jurisprudence and in maintaining a dialogue with Australia's independent Refugee Review Tribunal concerning the scope and import of Australia's international obligations pursuant to the United Nations Convention relating to the Status of Refugees and customary international law.

70. Three major concerns of the Australian Government in seeking to further the main purposes of the Decade had been to promote acceptance of and respect for the principles of humanitarian law; to encourage the development of that law and its further codification; and to encourage the teaching, study, dissemination

and wider appreciation of the principles of international humanitarian law. Those concerns reflected its perception that in recent years there had been an alarming decline in the effectiveness of and respect for those principles. In an effort to counter that tendency, Australia was convening a Regional Conference on Humanitarian Law to be held at the Australian Defence Force Academy in Canberra from 12 to 14 December 1994. Using the Final Declaration of the International Conference for the Protection of War Victims (A/48/742) as its reference point, the conference would identify and explore such fundamental issues as enforcement, the contribution of international humanitarian law to peace-keeping and peacemaking, sexual violence and crimes against women and children in armed conflict situations, the protection of cultural property and the environment, the establishment of mechanisms for improving the plight of civilians, prisoners of war and refugees, and the removal of mines from post-war zones. A key aim of the conference would be to develop a body of ideas and recommendations which could be fed into the work of the open-ended group of experts established pursuant to the Final Declaration of the Conference on war victims and other key humanitarian law forums.

71. Australia welcomed the work being done by the Sixth Committee and ICRC to promote understanding and acceptance of the laws relating to the protection of the environment in times of armed conflict. It commended the ICRC for its work in developing a set of guidelines for military manuals and instructions on the protection of the environment in times of armed conflict, and had already taken steps to verify that its military manuals and instructions on the laws of armed conflict were consistent with those guidelines.

72. Australia also wished to propose that one year in the Decade should be designated the "International Year of Humanitarian Law". It suggested that the year 1999, which would mark the centenary of the 1899 Hague Peace Conference, could appropriately be designated for that purpose. In that way, 1999 could bring a vital renewal of understanding of what world international humanitarian law and its obligations entailed.

73. Australia regarded the United Nations Congress on Public International Law, to be held in 1995, as an important forum for discussing major issues in that field. A more flexible format for the Congress, possibly involving the holding of workshops and working groups, would maximize opportunities for contributions from a large number of participants.

ANNOUNCEMENT CONCERNING SPONSORSHIP OF DRAFT RESOLUTIONS

74. The CHAIRMAN said that Armenia had joined the sponsors of draft resolution A/C.6/49/L.12.

The meeting rose at 5.50 p.m.

UNITED NATIONS

General Assembly

FORTY-NINTH SESSION

Official Records

SIXTH COMMITTEE
37th meeting
held on
Thursday, 17 November 1994
at 3 p.m.
New York

SUMMARY RECORD OF THE 37th MEETING

Chairman: Mr. MADEJ (Poland)
(Vice-Chairman)

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ANNOUNCEMENT CONCERNING SPONSORSHIP OF DRAFT RESOLUTIONS

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Distr. GENERAL
A/C.6/49/SR.37
2 December 1994

ORIGINAL: ENGLISH

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94-82389 (E)

In the absence of Mr. Lamptey (Ghana), Mr. Madej (Poland), Vice-Chairman, took the Chair.

The meeting was called to order at 3.30 p.m.

AGENDA ITEM 136: UNITED NATIONS DECADE OF INTERNATIONAL LAW (continued) (A/49/323 and Add.1 and 2; A/C.6/49/L.10)

1. Ms. ARYSTANBEKOVA (Kazakhstan) said that the aims of the United Nations Decade of International Law were of special importance to Kazakhstan which had been striving since independence to develop international legislation in accordance with the principles of international law. Its Constitution set forth the need to build a State based on the supremacy of law and the principle of separation of powers. Article 3 of the Constitution stressed that international legal documents concerning the rights and freedoms of the individual and the citizen which were recognized in Kazakhstan, prevailed over its domestic laws.

2. Kazakhstan's efforts to develop a solid legal basis for international cooperation was also manifested in its increasingly active participation in multilateral international treaties, including the Vienna Conventions on the law of international treaties and on diplomatic and consular relations, and the four Geneva Conventions of 1949 and their Additional Protocols. As a non-nuclear Power, Kazakhstan was also a party to the 1968 Treaty on the Non-Proliferation of Nuclear Weapons, to the 1990 Treaty on Conventional Armed Forces in Europe and the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, and to various conventions concerning terrorism and the environment.

3. Her delegation supported the programme of activities for the third term of the Decade proposed by the Working Group, which contained many recommendations of special interest to Kazakhstan, which still lacked experience in matters of international law. Of particular interest was the recommendation to States and international organizations to provide assistance to other States in order to facilitate their participation in the process of multilateral treaty-making, including their adherence to and implementation of multilateral treaties. The scope for such cooperation was wide, covering such fields as protection of the environment, development of transport systems, trafficking in narcotic drugs and international terrorism.

4. Kazakhstan's environmental difficulties were well known, since the problems of the Aral Sea and the former nuclear testing site in the Semipalatinsk region had taken on the dimensions of global environmental disasters. The solution of those problems required not only assistance from the United Nations and its specialized agencies, but, above all, the establishment of a solid legal basis for long-term international cooperation. In that connection, her delegation reaffirmed its interest in the programmes of the United Nations Environment Programme (UNEP) aimed at strengthening environmental legislation, and hoped that UNEP would consider the formulation of legal bases for international

cooperation with a view to solving the problems of the Aral Sea. Her delegation also wished to draw attention to the international project of the Caspian Sea States aimed at safeguarding the biological diversity of the Caspian Sea and its shores, which had been submitted to UNEP, UNDP and the World Bank with a view to consideration of joint measures for its implementation. It must be stressed that the problems of safeguarding and protecting the environment were no longer problems confined to individual countries or regions, but had become the concern of the population of the planet as a whole.

5. Integration in the world economy and development of transport systems was another field of international cooperation of special concern to Kazakhstan. The newly independent land-locked States of Central Asia were not yet parties to international conventions on that question, and were only now beginning to negotiate bilateral and multilateral agreements with their neighbours concerning transport matters. As former members of the Soviet Union, they lacked experience of international negotiations: the problem of concluding agreements in that area was one that must thus be addressed. In that context, her delegation noted the activities of the United Nations Conference on Trade and Development (UNCTAD) in providing assistance to the land-locked countries of Africa. The experience of UNCTAD in that field could be extremely useful to the land-locked States of Central Asia.

6. The establishment of a State where the rule of law prevailed, its democratic development and its successful integration in the international community were impossible without a knowledge of the underlying principles and rules of international law: hence the importance of the teaching, study, dissemination and broader recognition of international law. Courses in international law were compulsory in the legal faculties of all Kazahk universities. A greater awareness of internationcl law issues would enable Kazakhstan to participate more fully in seminars, conferences and symposia convened in the context of the Decade. Finally, in striving to perfect its national legislation in accordance with international law, Kazakhstan welcomed the United Nations Congress on International Law, to be held in 1995, which would provide a unique opportunity for representatives of all legal systems to exchange views about prospects and problems regarding the development of international law. The Congress would make it possible to elaborate general approaches to resolving the most urgent of those questions.

7. Mr. u hla MAUNG (Myanmar) noted with satisfaction that at the mid-point of the Decade, important steps had been taken by States and international organizations to achieve its purposes. Important treaties had been concluded, including the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations and the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations.

8. As a founding member of the Asian-African Legal Consultative Committee, Myanmar fully supported the goals of the Decade. Only in an atmosphere where the rule of law prevailed could there be international peace and security, a

sine qua non for the development of countries. If war was to be avoided, there must be respect for sovereignty and territorial integrity, non-aggression, non-interference in the internal affairs of States, equality and peaceful coexistence.

9. His country had consistently supported efforts to promote the rule of law in international relations and, in the past four years, had signed or acceded to a number of multilateral treaties.

10. Lastly, he reaffirmed his country's commitment to encourage the teaching, study, dissemination and wider appreciation of international law. In addition to national training courses for legal professionals, the training of military personnel had been carried out with the cooperation of the International Committee of the Red Cross. His delegation looked forward to the United Nations Congress on Public International Law to be held in 1995.

11. Ms. SAEKI (Japan), speaking in exercise of the right of reply, said that the allegations made by the representative of the Democratic People's Republic of Korea in his statement on 16 November 1994 were groundless, and that his statement had been a malicious exercise in anti-Japanese propaganda. Japan was determined to conduct a proactive foreign policy that would enable it to contribute to the future well-being of humankind. Remorseful at the suffering inflicted on its neighbouring countries by the Second World War, it had on many occasions voiced its determination to see that such a tragedy was never repeated, and was committed to establishing relations with the countries of Asia and the Pacific based on mutual trust and confidence. Furthermore, it was not the Japanese Government's understanding that the 1905 treaty mentioned in the statement by the representative of the Democratic People's Republic of Korea had been ineffective under the international law prevailing at that time.

12. Mr. KIM Jae Hon (Democratic People's Republic of Korea), speaking in exercise of the right of reply, said that the statement just made by the representative of Japan revealed the Japanese delegation's lack of knowledge of the history of the illegal occupation of the whole of Korea by Japan. It was exactly 89 years ago that the Ulsa Five-Point Treaty had been fabricated by Japan, on 17 November 1905. Before commenting on the unsuccessful attempt by the Japanese authorities to deny the historical facts, he wished to read out the text of a statement issued the previous day by the Foreign Ministry of the Democratic People's Republic of Korea, denouncing the Japanese authorities for their continuing refusal to admit the illegality and invalidity of that Treaty.

13. According to that statement, the Ulsa Five-Point Treaty was a fake document which did not conform to the requirements that would enable it to be regarded as a pact between countries. As could be seen from the original text of the so-called treaty, discovered two years previously, the document had not been endorsed or signed by the then Emperor Kojong, and had no seal of the State and no title. It had never been recognized by the Emperor. As acknowledged by a Japanese minister at the time, the treaty had been forcibly imposed by the Japanese imperialists with the backing of their armed forces. The treaty had no

legal validity either under the domestic law of the former Korea or under the international law prevailing in the early years of the twentieth century.

14. Nevertheless, the Japanese authorities shamelessly and brazenly refused to admit the crimes committed by Japanese imperialists in the past, thereby demonstrating that they still harboured wild and aggressive ambitions to dominate the Asian countries. The Government of the Democratic People's Republic of Korea and the Korean people bitterly denounced that unreasonable attitude. The key issue with regard to those treaties was not whether their illegality and invalidity were acknowledged, but whether the Japanese Government was ready sincerely to atone for its past crimes against Korea and to break with its militarist past.

15. Article 9 of the 1899 National Law of Korea stipulated that the Emperor should directly conclude all treaties. Widely recognized provisions of international law stipulated that a treaty could be enforced only after the endorsement of the Emperor, and that it was void unless ratified by the State. It was well known that Emperor Kojong had not recognized or ratified the Ulsa treaty. In a personal letter addressed to the heads of State of the United States, Tsarist Russia, Germany and France in January 1907, he had declared that from the outset he had not recognized the treaty concluded between a Japanese envoy and Pak Je Sun on 17 November 1905, and that the seal of the State had not been affixed to it; that he had opposed the arbitrary promulgation of the treaty by Japan; and that he had never transferred the independent imperial right to another country. That declaration clearly proved that Emperor Kojung had not signed or put the seal of the State to the so-called treaty document. Historians in his country had recently discovered new data which proved even more conclusively that the old treaties, including the Ulsa Five-Point Treaty legalizing the Japanese imperialists' occupation of Korea, were fake documents. In the southern part of Korea, too, historians had unearthed original documents in the Royal Archives proving that the old treaties had been forged. It was thus a shameless act on the part of the Japanese authorities to try to justify Japan's past history of aggression by claiming that the old treaties had been concluded legally. His delegation urged Japan, in its own interests, to make a clean breast of its past wrongdoings against humanity as soon as possible.

AGENDA ITEM 138: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-SEVENTH SESSION (continued) (A/C.6/49/L.11 and L.13)

Draft resolution A/C.6/49/L.11 (continued)

16. The CHAIRMAN said that Guatemala had joined the sponsors of the draft resolution.

17. Draft resolution A/C.6/49/L.11 was adopted.

Draft resolution A/C.6/49/L.13 (continued)

18. The CHAIRMAN said that Guatemala and Turkey had joined the sponsors of the draft resolution.

19. Draft resolution A/C.6/49/L.13 was adopted.

20. Mr. SHESTAKOV (Russian Federation), explaining his country's position on the draft resolution just adopted, said that the work of the United Nations Commission on International Trade Law (UNCITRAL) had, during the 27 years of the Commission's existence, been of real practical value to the development of the norms of international trade law. Its work was of benefit to all countries, including those whose economies were in transition; for that reason, his delegation had been able to join the consensus on the draft resolution. Nevertheless, his delegation had refrained from becoming a sponsor of the draft resolution because it had supported the retention of the preambular paragraph referring to the importance of the Commission's work to the aforesaid countries, as discussed during informal consultations. It was to be hoped that the matter could be taken up again at the next session of the General Assembly.

AGENDA ITEM 133: OBSERVER STATUS OF NATIONAL LIBERATION MOVEMENTS RECOGNIZED BY THE ORGANIZATION OF AFRICAN UNITY AND/OR BY THE LEAGUE OF ARAB STATES (continued) (A/C.6/49/L.7)

Draft decision A/C.6/49/L.7 (continued)

21. Draft decision A/C.6/49/L.7 was adopted.

22. Mr. NATHAN (Israel), explaining his delegation's position on the draft decision just adopted, said that the matter to which it referred had been taken up in the context of the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character. Article 89 of that Convention provided that the Convention should enter into force following the deposit of the thirty-fifth instrument of ratification or accession by States entitled to do that. However, to date, only 29 such instruments had been received according to the United Nations Treaty Section. To call upon States to ratify a Convention which had not yet entered into force appeared to be of doubtful practical value. Accordingly, had a vote been taken on the draft decision, his delegation would have voted against it.

AGENDA ITEM 143: CONVENTION ON JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY (continued) (A/C.6/49/L.14)

Draft resolution A/C.6/49/L.14

23. Mr. CALERO RODRIGUES (Brazil), introducing the draft resolution, said that, in paragraph 1, the General Assembly decided to accept the recommendation of the International Law Commission to convene an international conference of plenipotentiaries to consider the articles on jurisdictional immunities of States and their property and to conclude a convention on the subject.

Paragraph 2 took into account the concern expressed by a number of delegations that there should be adequate preparation for the conference by providing that the date and place of the conference should be determined at the fifty-first session of the Assembly.

24. The sponsors believed that the draft resolution offered a solution acceptable to all delegations. While differences persisted with regard to the agenda for the conference, it would be unfair to delay acceptance of the recommendation of the International Law Commission that the conference should be convened, since most delegations agreed on the need for a convention in that area.

25. Mr. MAIGA (Mali) said that while his delegation agreed that the date and place of the Conference should be determined in 1996, it believed that the Working Group should be reconvened in 1995 to reconcile differences regarding the provisions of the future convention so that another year would not be lost.

ANNOUNCEMENT CONCERNING SPONSORSHIP OF DRAFT RESOLUTIONS

26. The CHAIRMAN said that Austria had joined the sponsors of draft resolution A/C.6/49/L.12.

The meeting rose at 4.20 p.m.

UNITED NATIONS

General Assembly

FORTY-NINTH SESSION

Official Records

SIXTH COMMITTEE
38th meeting
held on
Friday, 18 November 1994
at 10 a.m.
New York

SUMMARY RECORD OF THE 38th MEETING

Chairman: Mr. MADEJ (Poland)
(Vice-Chairman)

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Distr. GENERAL
A/C.6/49/SR.38
23 December 1994
ENGLISH
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94-82407 (E)

In the absence of Mr. Lamptey (Ghana), Mr. Madej (Poland) took the Chair.

The meeting was called to order at 10.35 a.m.

AGENDA ITEM 145: REVIEW OF THE PROCEDURE PROVIDED FOR UNDER ARTICLE 11 OF THE STATUTE OF THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS (A/49/258; A/C.6/49/2; A/C.5/49/13)

1. Mr. ZACKLIN (Deputy Legal Counsel and Director of the Office of the Legal Counsel), introducing the report of the Secretary-General on review of the procedure provided for under article 11 of the statute of the Administrative Tribunal of the United Nations (A/C.6/49/2), said that in its decision 48/415, the General Assembly had requested the Secretary-General to carry out a review of the procedure provided for under that article and to report thereon at its forty-ninth session, either as part of the report requested under resolution 47/226 or separately. As indicated in paragraph 3 of the report, the Secretary-General had initially planned to issue a single report covering all aspects of the internal system of justice in the Secretariat. However, it had subsequently been decided to prepare a separate report on the review of the procedure provided for under article 11 since that matter was considered to be distinct from the reform of the internal system of justice of the Secretariat. The two issues were distinct, although closely interrelated. Thus, the Secretary-General's report on reform of the internal system of justice in the United Nations Secretariat (A/C.5/49/13) proposed the establishment of ombudsman panels, which corresponded to the proposals considered by the Sixth Committee at the forty-eighth session of the General Assembly in connection with its consideration of the review procedure under article 11.

2. The matter had been raised for the first time at the thirty-third session of the General Assembly, during consideration of the more general question of harmonizing the statutes of the Administrative Tribunals of the International Labour Organization (ILO) and the United Nations. The review procedure provided for under article 11, which had been the subject of only limited interest for almost a decade, was currently the object of much criticism. The procedure had been described as deficient, unsatisfactory, ineffective, complex and contradictory. Moreover, it was felt that the procedure was not effective on a practical level in protecting staff and should accordingly be abolished. In addition, many States and some members of the International Court of Justice had doubts as to whether it was appropriate for the Court to hear cases between the United Nations and its staff members. In that connection, it should be noted that in only three out of 92 cases brought before it had the Committee on Applications for Review of Administrative Tribunal Judgements requested an advisory opinion of the Court. That function of the Court had been criticized by Judge Ago who, in a separate opinion appended to the advisory opinion of the Court with regard to Tribunal judgement No. 333, Yakimetz v. the Secretary-General of the United Nations, had said that the role played by the Court was that of an administrative appeal court and was incompatible with its mission as the supreme judicial organ of the United Nations, which was to settle international disputes between States.

3. The question of the abolition of the procedure under article 11 must be viewed in the context of that criticism. Nevertheless, as indicated in the report, the Sixth Committee might consider whether to abolish the procedure completely or replace it with a different procedure. In the 1954 advisory opinion which had led to the approval of the current procedure, the Court had concluded that, in order for the judgements of the Administrative Tribunal to be reviewed by the General Assembly, an express provision to that effect would have to be included in the statute of the Tribunal. In such a case, the General Assembly could hardly act as a judicial organ, especially since the United Nations was itself a party to the disputes.

4. In a separate opinion appended to the advisory opinion of the Court with regard to Administrative Tribunal judgement No. 158, Fasla v. the Secretary-General of the United Nations, Judge Jiménez de Aréchaga had commented that in 1954 the Court had suggested that a system of judicial review should be established from which the General Assembly would be excluded.
Judge Jiménez de Aréchaga had noted that in making that suggestion the Court had taken into account a decision adopted by the Assembly of the League of Nations in 1946 and the arguments advanced in the General Assembly in 1953 which presupposed that those essentially political bodies had the power to refuse to comply with the judgements of an administrative tribunal when they considered that it had exceeded its competence.

5. In view of the foregoing, he suggested that, if it decided to abolish the procedure provided for under article 11, the General Assembly must also decide whether Member States should be provided with the opportunity to seek an advisory opinion of the Court. Such a procedure might be envisaged in cases where there was reason to believe that the Administrative Tribunal had exceeded its jurisdiction or competence, defined by the General Assembly itself in promulgating the Tribunal's statute, or if a Member State had reasons to consider that the Tribunal had erred on a question of law relating to the provisions of the Charter of the United Nations.

6. Mr. GAWLEY (Ireland) said that, while the procedure provided for under article 11 of the statute of the Administrative Tribunal should be abolished, other systems of balance needed to be set up, such as establishing an office of ombudsman or strengthening the provisions of article 12 of the statute, which would permit application to the Tribunal for review of judgements. In paragraph 37 of his report (A/C.6/49/2), the Secretary-General had concluded that the best solution would be to abolish the procedure. Yet, in paragraph 38, he raised the possibility of retaining the procedure in a modified form, which would allow Member States to seek an advisory opinion of the Court on two of the four grounds provided for under article 11.

7. The report on reform of the internal system of justice in the United Nations Secretariat (A/C.5/49/13) did not address the issue of the procedure provided for under article 11 of the statute of the Administrative Tribunal. None the less, according to paragraph 17 of that document, a report would be submitted to the General Assembly on the United Nations Administrative Tribunal statute and role when the new mechanisms proposed in the document had been tried

out and evaluated. Moreover, those mechanisms included ombudsman panels which would serve as mediators in cases where conciliation had not been successful. In view of those circumstances, it would be best to postpone any decision with regard to abolishing the procedure provided for under article 11 until there had been an opportunity to evaluate the mechanisms which would soon be set up. He proposed that it should be decided that, at its fiftieth session, the General Assembly would consider the question of deleting article 11 and any amendments thereto.

8. Ms. WILMSHURST (United Kingdom) said that the report of the Secretary-General on the review of the procedure provided for under article 11 of the statute of the Administrative Tribunal of the United Nations (A/49/258) contained the replies received from Member States pursuant to General Assembly decision 48/415. In their replies, all the States were in favour of abolishing that review procedure. For its part, her delegation considered that the procedure had never helped any staff member or Member State and served no useful purpose. Any possible advantage in retaining it was far outweighed by the disadvantages (false expectations, delays, costs, and inappropriateness of the procedure with regard to both the Committee on Applications for Review of Administrative Tribunal Judgements and the International Court of Justice). The report of the Secretary-General contained a draft resolution prepared by her delegation which would have the effect of terminating the review procedure by amending the statute of the Administrative Tribunal.

9. In the other report before the Sixth Committee on the same item (A/C.6/49/2), the Secretary-General had concluded that the review procedure provided for under article 11 had not proved to be a constructive and useful element of the appeal system available within the Secretariat; on the contrary, it had caused confusion and criticism, which supported the view that the best solution would be to abolish it. She welcomed that conclusion and noted that the Secretary-General considered that Member States might wish to retain the ability to challenge Administrative Tribunal judgements, although on more limited grounds. However, in that case the staff might believe that States would only challenge judgements which went against the Organization and not those which went against the staff. Furthermore, some disgruntled staff members would seek the agreement of some Member State to take up their case before the Committee on Applications for Review of Administrative Tribunal Judgements thus occasioning as many cases as before with all the consequent disadvantages.

10. In her opinion, the procedure provided for under article 11 should be abolished. The only question which remained was the timing of abolition. If it was decided to abolish it during the current year, the United Kingdom would be prepared to submit a text along the lines of the draft resolution mentioned previously. In that regard, it could be argued that it would be better to consider the question within the framework of the reform of the internal system of justice currently being considered in the Fifth Committee. However, the Secretary-General explained in paragraph 3 of his report (A/C.6/49/2) that the study of the review procedure basically dealt with an issue distinct from that discussed in connection with the reform of the system of justice. Since the Secretary-General had treated the two matters separately the Sixth Committee

should be able to do likewise. However, if the Committee felt that the question should be delayed for one more year to allow the staff to have a better picture of the changes being made to the system, her delegation could agree to postpone the adoption of a decision on the issue for no longer than a year.

11. Mr. GONZALEZ (France) said that article 11 of the statute of the United Nations Administrative Tribunal made an exception to the principle established in article 10, paragraph 2, that the judgements of the Tribunal should be final and without appeal and authorized the Tribunal to request an advisory opinion of the International Court of Justice.

12. His delegation had previously pointed out the inherent deficiencies of that system. In order to afford an opportunity to seek a review of Tribunal judgements, recourse was had to an institution which was basically political but was obliged to take decisions on the basis of highly technical legal concepts such as errors of law or rules pertaining to jurisdiction. Thus, the International Court of Justice would be seized of administrative disputes which obviously lay outside its usual purview. Even more serious was the fact that uncertainty was created with respect to the scope of the Tribunal's judgements, since the right established under article 11 was invariably interpreted as a form of appeal with the attendant delays in the procedure and the inevitable disappointment of appellants.

13. In view of the foregoing, he felt that the procedure established under article 11 served no useful purpose and was even detrimental to a sound administration of justice. It should therefore be abolished without allowing for any reservations, even with respect to States, since any exception in that regard would be misinterpreted by the other parties to whom that right was currently granted.

14. However, article 11 should not be abolished in a vacuum, but should be considered as part of the reform of the internal system of justice in the United Nations Secretariat, on which the Secretary-General had prepared a report (A/C.5/49/13). It would therefore be wise to await the decisions of the General Assembly on the preliminary recommendations of that report and the contents of a more detailed report of the Secretary-General pursuant to those decisions. Consequently, consideration of that issue should be deferred until the following session.

15. Mrs. FLORES (Uruguay) said that it appeared from the written observations submitted by Member States with respect to the procedure provided for under article 11 of the statute of the Administrative Tribunal that they were primarily concerned about the terms of reference of the Committee on Applications for Review of Administrative Tribunal Judgements, which was limited solely to the consideration of applications in order to determine whether there were grounds for requesting an advisory opinion of the International Court of Justice. Such requests had been made in only three cases, although the Committee had considered over 80 applications. Secondly, Member States were concerned about the Committee's jurisdiction. Since staff members did not always understand the extremely limited scope of the review procedure and often

submitted requests which had no prospects whatsoever of success. Lastly, there was concern about the fact that the Committee, a basically political body, was performing quasi-legal functions.

16. Consequently, a careful analysis should be conducted before any amendments were made to the statute of the Administrative Tribunal. The procedure established under article 11 should not be abolished unless another mechanism for resolving disputes was established, and the process for the reform of the internal system of justice in the United Nations Secretariat should always be borne in mind. In her delegation's opinion, the consideration of the item should be deferred until the next session of the General Assembly.

17. Mr. THAHIM (Pakistan) said that the procedure provided for under article 11 of the statute of the Administrative Tribunal did not serve much of a useful purpose; there were some inherent shortcomings in that article, especially as there was no provision ensuring that the Committee on Applications for Review was equipped with legal expertise. Furthermore, the International Court of Justice was inappropriately requested to provide an advisory opinion on disputes of an administrative nature.

18. Past experience showed that only a few applications had been allowed and that in none of those cases had the advisory opinion requested of the International Court of Justice affected the Tribunal's judgement; on the other hand, the inordinate delays in the implementation of the Tribunal's decisions was to be deplored.

19. His delegation wished, however, to stress that any move towards deleting article 11 from the statute of the Administrative Tribunal must be accompanied by an alternative practical mechanism to address all the problems which arose in relation to contracts of employment of United Nations staff members. In that context, his delegation would be willing to consider favourably the creation of an office of ombudsman to address the problems of United Nations personnel. It proposed that the consideration of the issue should be deferred until the fiftieth session of the General Assembly, pending an updated report of the Secretary-General on the reform of the internal system of justice in the United Nations Secretariat.

20. Mr. ROWE (Australia) said that, in his delegation's view, the procedure for review of judgements established under article 11 of the statute of the Administrative Tribunal of the United Nations was unsatisfactory and had failed to demonstrate its efficiency as a mechanism for protecting the staff. The Committee on Applications for Review of Judgements was not an appeal body but a political one, under whose mandate it was almost impossible to recommend an appeal to the International Court of Justice. Furthermore, it did not seem wise to burden the Court, whose real purpose was to decide on disputes between nations, with additional work.

21. Accordingly, his delegation believed that the statute of the Administrative Tribunal should be amended by removing the procedure in article 11. That would be a first step in the process of reforming the internal system of justice in

the Secretariat. At the same time, another system must be put into place to ensure the protection of the rights of United Nations staff.

22. To that end, a possible solution would be the appointment of an ombudsman who would address problems of staff members before they were submitted to the Administrative Tribunal and could also follow up its decisions. United Nations staff would thus have their interests protected effectively, instead of being offered an illusory and highly politicized mechanism for appeal to the International Court of Justice.

23. Mr. NATHAN (Israel) drew attention to Israel's views on the topic under discussion, which were contained in document A/49/258. In accordance with the review procedure provided for in article 11 of the statute of the Administrative Tribunal, Member States, the Secretary-General or United Nations staff members who did not agree with an Administrative Tribunal judgement could appeal to the Committee on Applications, which, if it decided there was a substantive basis for the application, could request an advisory opinion of the International Court of Justice. Since the establishment of the Tribunal in 1955, however, only three applications had led to such a request, and, in all three cases, the Court had decided to uphold the decision of the Tribunal.

24. Israel believed that the provisions of article 11 were inappropriate because they had the effect of conferring on a political body the ability to review Administrative Tribunal decisions, and of involving the International Court of Justice in employment issues that lay outside the traditional scope of its activities. The provisions of article 11 had not been useful in the past and it was highly unlikely that they would be in the future.

25. As indicated in the report of the Secretary-General, a reform of the internal system of justice in the United Nations Secretariat had been undertaken. Accordingly, a final decision on the item under consideration should be postponed so that the Committee could consider it in the light of the Secretary-General's conclusions on that reform.

AGENDA ITEM 143: CONVENTION ON JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY (continued) (A/C.6/49/L.14 and L.20)

A/C.6/49/L.20

26. Ms. WILMSHURST (United Kingdom), speaking on behalf of the sponsors of draft resolution A/C.6/49/L.20 (Australia, Canada, Germany, the Netherlands, the United Kingdom and the United States) said that, from the results of the informal consultations held during 1994, it was clear that there were several outstanding areas of disagreement on issues of central importance to a convention on jurisdictional immunities. Thus, it would be premature to decide, at the current session, to convene a conference to negotiate a convention as proposed in document A/C.6/49/L.14. Because of the disagreements mentioned, such a conference could end without adopting a convention or by adopting a convention without the support of a significant number of countries, with the risks that would involve.

27. In paragraph 2 of draft resolution A/C.6/49/L.20, States were invited to submit to the Secretary-General their written comments on the conclusions of the Chairman of the informal consultations held. In paragraph 3, it was decided to resume consideration of the issues of substance at the fifty-third session of the General Assembly. That would allow a period of four years for reflection before returning to consideration of the item in the Sixth Committee. The United Kingdom would have preferred five years, but other States appeared to favour a shorter period. Since it was impossible to arrive at a single compromise text, the sponsors of the draft resolution wished to make it clear that some elements of the text of draft resolution A/C.6/49/L.14 were unacceptable, especially the references to the need to make a commitment to holding a conference, since the international community had not clearly expressed its support for such a step; that was the reason for the submission of document A/C.6/49/L.20.

28. The CHAIRMAN said that the Russian Federation had joined the sponsors of draft resolution A/C.6/49/L.14.

AGENDA ITEM 139: REPORT OF THE COMMITTEE ON RELATIONS WITH THE HOST COUNTRY (continued) (A/C.6/49/L.15)

29. The CHAIRMAN said that France had joined the sponsors of draft resolution A/C.6/49/L.15.

AGENDA ITEM 134: STATUS OF THE PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS OF 1949 AND RELATING TO THE PROTECTION OF VICTIMS OF ARMED CONFLICTS (continued) (A/C.6/49/L.19)

30. The CHAIRMAN said that Hungary had joined the sponsors of draft resolution A/C.6/49/L.19.

AGENDA ITEM 140: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/C.6/49/L.3 and L.18)

31. The CHAIRMAN said that Japan and the Philippines had joined the sponsors of draft resolution A/C.6/49/L.18.

32. Ms. DAUCHY (Secretary of the Committee) said that, after consultations with the other sponsors of draft resolution A/C.6/49/L.3, Poland had decided to withdraw it.

The meeting rose at 11.40 a.m.